

APPENDIX C

CA Department of Parks and
Recreation

Right of Entry Permit

2011 Batiquitos Lagoon Maintenance
Dredging

Bidlog 2011-01

RIGHT OF ENTRY PERMIT

Agency: Department of Parks and Recreation

Project: San Diego Coast Dist. South Ponto State Beach
BATIQUITOS LAGOON MAINTENANCE DREDGING

This Right of Entry Permit (Permit) is made and entered into this ____ day of August 2011, between the California Department of Parks and Recreation (DPR) and the California Department of Fish & Game, its officers, employees, agents and contractors, hereinafter called (Permittee), both agencies of the State of California.

RECITALS

- Whereas, DPR owns, operates, and maintains the State Park unit known as South Ponto State Beach, in the County of San Diego, State of California; and
- Whereas, Permittee has applied to DPR for permission to access South Ponto State Beach for purposes of carrying out the Batiquitos Lagoon Maintenance Dredging Project; said project described below (the Project), and DPR desires to accommodate Permittee in its request; and
- Now therefore, DPR hereby gives permission for Permittee to enter South Ponto State Beach for purposes of carrying out the Batiquitos Lagoon Maintenance Dredging Project, as and to the extent such Project is described, permitted, and approved and under the terms and conditions contained herein.

TERMS AND CONDITIONS

This Permit is subject to the following terms and conditions:

1. **Project description:** DPR hereby gives permission to Permittee to enter upon those lands as depicted on the attached 8-8-2011 Plan Set entitled Exhibit "A" (the Property), solely for the purpose of providing construction access, staging, and beach sand replenishment area for Batiquitos Lagoon maintenance dredging and associated beach replenishment and grooming activities. Most specifically Sheet C-8 of the attached plans identifies the beach nourishment sand placement envelope, access routes, equipment fueling location, equipment storage, and beach grooming proposed on the State Beach. The sheet also identifies environmentally sensitive areas to be avoided, crossover ramp requirements for the dredge discharge pipe, and limitations on the length of beach segments that may be exclusively occupied by the Contractor during sand placement. Work specifically authorized includes:
 - Mobilization, assembly, and disassembly of plastic dredge pipe at South Ponto Beach to convey sand slurry from flood shoal dredging within Batiquitos Lagoon.
 - Placement of approximately 118,000 cy of beach quality sand dredged from the Batiquitos Lagoon inlet flood shoal onto the South Ponto Beach within a forebeach prism utilized for the Regional Sand Beach Project placement envelope, except that the height of the beach shall not be greater than the height of the adjacent Carlsbad Boulevard roadway section.
 - The beach sand delivery and placement shall be completed via hydraulic dredge discharge pipe. Once sand is placed on the beach, a standard bulldozer will be utilized to push sand out to create desired beach profiles into the surf zone.
 - Sand placement and other beach activities shall be completed between September 6 (after Labor Day) and March 1.

- Other than equipment necessary to place sand on the beach, the delivery pipeline, portable toilet and trash receptacles, no other equipment storage or use on the beach is authorized. A small fenced storage area (20' x 40' shall be provided to contain all contractor equipment and materials authorized and its final location shall be coordinated with State Park staff.
 - Beach grooming of approximately 6,500 cy of sand to move the high beach crest away from Carlsbad Boulevard, the Carlsbad Boulevard bike lane, and the on-street parking, as well as placement of dune fencing are authorized as an optional project elements.
2. **Permit Subject to Laws and Permits:** Permittee shall, at Permittee's sole cost and expense, comply with all municipal, state, and federal authorities now in force or which may be in force pertaining to the Project and use of the Property as provided by this Permit. This Permit is expressly made subject to any and all laws and regulatory permits or approvals, including any conditions of such permits and approvals issued or required to be issued by such regulatory agencies.
 3. **Term of Permit:** This Permit shall only be for the period beginning on August 31, 2011, for site surveys and investigations only, with actual Project construction activities beginning after Labor Day (September 5, 2011 through March 1, 2012), or as may be extended by written mutual agreement.
 4. **Payment or Consideration:** By design, an excess of sand needs to be removed from the Wetlands every 2-3 years. The placement of this clean dredge sand will maintain a beach-normal profile, increase recreational area for visitors, and help reduce erosion impacts to the State Beach. Therefore, no further consideration is due.
 5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, licenses, encumbrances and claims, whether or not of record, that may affect the Property.
 6. **Waiver of Claims and Indemnity:** Permittee agrees to protect, save, hold harmless, defend and indemnify DPR, its officers, employees and/or agents from and against any and all loss, injury, damage, claims, legal actions or liability that may be suffered or incurred by DPR, its officers, employees and/or agents, caused by, arising out of or in any way connected with Permittee's exercise of the rights hereby granted or Permittee's activities conducted on the Property under this Permit, including, but not limited to, any and all claims and legal actions against DPR, its officers, employees and/or agents arising from injury or damage to persons or property caused by Permittee's contractor or subcontractors in connection with the Project.
 7. **Responsibility for Damage to Property:** Permittee shall be responsible for any and all damage to the Property caused by or arising out of Permittee's exercise of the rights granted under this Permit, and shall be ultimately responsible for any and all damage to the Property caused by Permittee's contractors, agents, officers and/or employees. DPR, in its sole discretion, shall determine whether Permittee shall be required to repair any such damage or to reimburse DPR for the cost to DPR of repairing such damage.
 8. **Contractors:** When contracting out all or any portion of the work permitted hereunder, Permittee shall incorporate into its contracts the terms, conditions, and requirements contained herein. Permittee shall be responsible for ensuring that its contractors and/or subcontractors comply with the terms and conditions contained herein. Failure of Permittee's contractors to comply with the terms and conditions of this Permit shall constitute default by Permittee, allowing DPR to stop all work until Project is in compliance or in the event of continued non-compliance terminate this Permit and/or take the actions described in Section 21 herein.
 9. **Insurance Requirements:** Permittee shall require its contractors to have the commercial general liability, property, vehicle liability and workers' compensation insurance policy or policies that meet the requirements of the State of California contracting laws applicable to the Project and state agencies such as Permittee. Permittee shall consult with Department of General Services, Office of

Risk and Insurance Management to ensure that appropriate levels of insurance coverage for the Project activity are obtained.

Any such policies shall contain an endorsement naming DPR as an additionally named insured at no cost to DPR. Any such policies shall contain an endorsement naming DPR as loss payable, and provide that payments for any loss or damage to the Property, its resources, improvements and/or facilities caused by Permittee's contractor shall be made to DPR and Permittee as co-payees, to be used to repair, rebuild, restore or replace the insured property at DPR's discretion. If the payments are not used for repair, rebuilding, restoration or replacement of the insured property, they shall be made payable directly to DPR as reimbursement for the loss or damage and may be used for other rebuilding, repair or replacement as determined by DPR, at its sole discretion, to be necessary and appropriate.

Permittee shall provide to DPR evidence that the insurance required to be carried by this provision, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefore have been paid.

10. **Reservation of Rights:** DPR reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.
11. **Access Limits and Conditions:** Access to the Property shall be limited to the access designated by DPR and as depicted in Exhibit A. Work shall conform to that identified within the engineering plans for the Batiquitos Lagoon Maintenance Dredging 2011-2012 (Merkel & Associates and TerraCosta Consulting Group, August 8, 2011). Explicit limitations to the work that are made a part of this permit include:
 - a. Access is granted as a non-exclusive use of DPR lands. The Permittee shall provide for safe and continuous beach access and through passage around the work area for the duration of the project work. The Permittee shall have the rights to close up to 300 linear feet of beach at any given time to accommodate sand placement in a safe manner. Where beach areas are closed, Permittee shall provide for safe pedestrian and DPR vehicle passage past work areas. Sand ramps or buried sections of dredge pipe will be used to accommodate transit, designed and implemented not less than every 300 feet and shall be to the satisfaction of DPR's representatives. Access for emergency vehicles at the pipe sweep shall be maintained at all times.
 - b. Permittee shall post signage at access points for the project work area to inform the public of the project activities and purpose. Information shall be provided by the Permittee that indicates beach access routes and any local closure conditions. The overall duration of beach use shall be identified on the signage.
 - c. Permittee shall protect sensitive habitat during the completion of work.
 - d. Permittee shall discharge only clean sand with a compatible grain size onto the State Beach. Sands placed on the beach shall consist of not less than 80% sand fraction by weight. Sand shall be physically compatible with existing beach sands.
 - e. The Permittee shall maintain construction operations in a clean and orderly fashion that provides for the general enjoyment of the State Beach by the general public. Permittee shall have an oil spill prevention and response plan in place prior to construction activities. Sufficient staff must be maintained onsite to minimize impacts on park operations.
 - f. The Permittee and its contractors shall consolidate and fence off equipment and any project materials essential to beach sand placement only in the most restricted area of high and dry beach as possible. The fenced area shall not exceed 20' X 40'. Tarps must be placed underneath all equipment parked overnight. Equipment fueling shall only be conducted at the Carlsbad Boulevard parking area and shall not occur on the beach itself. The Permittee and its contractor shall not store or maintain any equipment or materials on the State Beach that are not

associated with the actual activities required to occur on the beach. No work trailers shall be placed on the beach. General staging and storage shall not be provided on real property under the jurisdiction of DPR.

- g. The Permittee shall use only designated ingress and egress routes and shall be responsible for the prompt repair of any damage caused by equipment or other contractor operations within the State Beach. Where required by the State Parks District Superintendent and as deemed necessary by DPR to provide for public safety, repairs of damage shall be made within 24 hours. Other damage shall not be delayed more than 10 working days following completion of final sand placement from the authorized maintenance event.
- h. The Permittee shall be responsible for the prompt collection and removal of any trash, debris, rocks larger than a tennis ball, or construction wastes that are associated with the construction work or which are derived from the beach nourishment materials.
- i. The Permittee shall be responsible for all costs associated with the construction, monitoring, and reporting associated with issued permits and obligations imposed by local, state, or federal regulatory entities or property owners. The Permittee shall also be responsible for any clean-up or response liabilities for unintended damage or spills resulting from the proposed work.
- j. The Permittee shall coordinate with and notify DPR staff of any incidents, accidents, or issues that arise with the work or interactions with the public that reasonably may be of interest or concern to DPR. Notifications of emergency events shall be made within 4 hours and other incidents must be reported within 24-hours to the District Superintendent or his designee. Permittee shall provide 24-hour contact information for the Permittee's Project Manager to DPR. DPR shall provide a 24-hour emergency contact number to Permittee's Project Manager.
- k. Any proposed alteration to the work described in the project plans shall be discussed with the District Superintendent's designee prior to initiation in order to determine if a modification to this Permit is required.
- l. Permittee, Permittee's representatives, and contractors shall not construe, nor use special permit access for recreational purposes not afforded the general public. This includes vehicular access to beach lands for uses not directly related to the authorized work.

12. Notice of Work: Permittee shall coordinate its entry onto the Property with DPR by contacting the District Superintendent over South Ponto State Beach or his/her designated staff forty-eight (48) hours prior to the commencement of work, and shall comply with the schedules agreed upon. Permittee shall notify DPR through the designated contact person at least forty-eight (48) hours prior to any change in the project schedule or prior to cessation of work.

13. Limits of Work: In no event shall this Permit authorize work in excess or contrary to the terms and conditions of any regulatory agency, permit, or approval. Under no circumstances, whether or not permitted or authorized by any regulatory agency, permit, or approval, shall Permittee's activities violate any of the terms and conditions stated herein or exceed that which is reasonably necessary to carry out the purpose as described herein.

14. Public Safety: Permittee shall erect orange plastic temporary construction fencing around beach discharge areas prior to commencement of work to prohibit public access to the construction zone including the mobile 300 linear feet of active beach work area. Permittee shall remove such fencing within two (2) days of the completion of work. Permittee shall, or cause its contractors or subcontractors to take any and all other necessary and reasonable steps to protect the public from harm due to the work.

15. Compliance with Monitoring and Mitigation Measures: Activities conducted within the boundaries defined in this Permit will comply with all State and Federal environmental laws, including but not limited to the Clean Water Act, State and Federal endangered species acts, CEQA, and Section 5024 of the Public Resources Code.

- 16. Restoration of Property:** Permittee shall be responsible for restoration, repair, and revegetation of the Property after completion of the project and Permittee shall complete a site walk-through with DPR staff at the end of work to ensure that all necessary measures have been taken to complete work and clean-up construction activities prior to release of Permittee's contractor from the site.
- 17. Right to Halt Work:** DPR reserves the right to suspend this Permit and halt Permittee's work in the event that such cessation of work is necessary to protect the health and safety of employees, visitors or users of the South Ponto State Beach including Permittee, whether the threat to health and safety is related to the Project or not.
- 18. Use Restrictions:** The use of the Property by Permittee, including its employees, contractors, guests and invitees, shall be allowed on a 24 hour basis 7 days a week during the period of project work. Arrangements for after hours access shall be made with DPR staff.

Activities on the Property shall be conducted only in a manner that will not interfere with the orderly operation of the South Ponto State Beach. Permittee agrees to immediately discontinue any disruptive or disorderly conduct and remove any contraband. Contraband includes, but is not limited to: beer, alcoholic beverages, illegal and illicit drugs, firearms, explosives and edged weapons.

Use of all established roads and trails by any motorized vehicle, (including but not limited to motorcycle, car, truck, jeep, tractor, or all-terrain vehicle) shall be limited to only the Permittee, Permittee's employees, agents or contractors for patrol, maintenance or repair purposes only and shall be subject to all other conditions and/or restrictions of this Permit. No unauthorized driving shall take place on the bike trail.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as herein set forth, without the prior written consent of DPR.

- 19. DPR's Right to Enter:** At all times during the term of this Permit, there shall be and is hereby expressly reserved to DPR and to any of its agents, contractors, employees, representatives or licensees, the right at any and all times to enter upon the Property for DPR purposes.

Permittee shall not unreasonably interfere with DPR's programs and activities.

- 20. Protection of Property:** Permittee shall protect the Property, including all improvements and the natural resources thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:

- (a) Permittee may not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.
- (b) Permittee may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon the Property.
- (c) Permittee may not cut, prune or remove any native trees or brush upon the Property, except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.
- (d) Permittee may not disturb, move or remove any rocks or boulders upon the Property except as provided in section 11(h) and for routine fire protection, trail clearing, maintenance or the elimination of safety hazards without first obtaining written permission by the District Superintendent.

- (e) Permittee may not grade or regrade, or alter in any way, the ground surface of the Property, except as indicated by plans and/or coordinated first with the District Superintendent.
- (f) Permittee may not use or dispose of hazardous substances on the Property.
- (g) Permittee shall exercise due diligence in the protection of the Property against damage or destruction by fire, vandalism or other cause.

21. Default or Breach: In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit, DPR may at any time thereafter, without limiting DPR in the exercise of any right of remedy at law or in equity which DPR may have by reason of such default or breach, do one of the following:

- (a) Recover any costs or damages caused by Permittee or its contractor and allow Permittee to continue to enter and use the Property under the terms and conditions of this Permit,
- (b) Terminate this Permit whereupon Permittee shall immediately surrender possession of the Property to DPR. In such event, DPR shall be entitled to recover from Permittee all damages incurred by DPR by reason of Permittee's default or breach, including, but not limited to, the following:
 - (i) any amount necessary to compensate DPR for all the loss or damage proximately caused by Permittee's failure to perform its obligation under this Permit; and
 - (ii) at DPR's election, such other amounts, in addition to or in lieu of the foregoing, as may be permitted from time to time by applicable law.
- (c) Suspend this Permit, halt work and demand mitigation measures, with or without prior notice to Permittee;
- (d) At any time after Permittee is in default or material breach of this Permit, DPR may, but is not required to, mitigate its losses or damages from such default or breach at Permittee's cost and expense. If DPR at any time pays any sum or does any act to mitigate any losses or damages caused by Permittee's default or breach, the sum paid by DPR shall immediately become due and payable from Permittee to DPR.

22. Reliance on Investigations: Permittee accepts this Permit, and the Property to which it pertains, in its as-is condition and has made such investigation of the facts pertaining to this Permit and all the matters pertaining thereto as it deems necessary.

23. Entire Agreement: The parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the parties, and that the terms of this agreement are contractual and not a mere recital.

24. Warranty of Authority: The undersigned represents that they have the authority to, and does, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents, and this Permit and said additional documents are, accordingly, binding on said person or entity.

25. Assignment: This Permit shall not, nor shall any interest herein be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntary or involuntary or by operation of law, nor shall Permittee let or sublet or grant any license of permit with respect to the use and occupancy of the Property or any portion thereof, without the written consent of DPR.

26. **Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

27. **Executed Counterparts:** The signature pages of this Permit may be executed in counterparts. When all parties have signed, all executed counterparts taken together shall constitute one and the same instrument. DPR shall be responsible for receiving and retaining the originally executed signature pages of each party, for dating the Permit as of the latest date upon which it is executed as among the signatories hereto, and for providing a copy of the dated and executed Permit to each of the parties.

STATE OF CALIFORNIA
Department of Parks and Recreation

By: _____
Name:
Title: District Superintendent
San Diego Coast District

STATE OF CALIFORNIA
Department of Fish & Game

By: _____
Name: Ed Pert
Title: Regional Director
South Coast Region (Region 5)